

SA 2003 RF 0066

December 9, 2003

VIA PERSONAL DELIVERY

Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814

Attention: Tricia Knight

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DEC 10 2003

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Re: Car Buyers' Bill of Rights Act

Dear Ms. Knight:

Pursuant to Elections Code section 9002, I request that the Attorney General prepare a title and summary of a measure entitled the "Car Buyers' Bill of Rights Act." The text of the measure, a check for \$200.00, the address at which I am registered to vote and the signed statement certifying that I will not willfully allow initiative signatures to be used for purposes other than qualification of the measure are enclosed.

Sincerely,

Rosemary Shahan

Signed Statement Required by Elections Code Section 9608

I, Rosemary Shahan, acknowledge that it is a misdemeanor under state law (Section 18650 of the Elections Code) to knowingly or willfully allow the signatures on an initiative petition to be used for any purpose other than qualification of the proposed measure for the ballot. I certify that I will not knowingly or willfully allow the signatures for this initiative to be used for any purpose other than qualification of the measure for the ballot.

Rosemary Shahan

Dated this 9th day of December, 2003

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INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

CAR BUYERS' BILL OF RIGHTS ACT

Section 1: Title.

This measure shall be known and may be cited as the "Car Buyers' Bill of Rights."

Section 2: Findings and Declarations

The people of the State of California find and declare as follows:

- (a) Consumer spending accounts for approximately two-thirds of economic activity in America, and particularly in times of economic hardship, consumers tend to be the sole pillar sustaining our national and state economies. It is vitally important for the health of California's economy that consumers have confidence in the fairness of the marketplace, especially when it comes to making important decisions, like buying a car.
- (b) For most Californians, owning a car is a necessity of life. Buying a used car is also a major expense. Unlike many other products consumers buy, however, they do not have the right to return a used car within three days of purchase. There is no "cooling-off period," even when a consumer has been subjected to high-pressure sales tactics, or been worn down by lengthy negotiations. It is often extremely hard to get a refund for a used car, even if it falls apart when the buyer drives it off the car lot, or if it has hidden defects the salesperson failed to disclose. As with many other products, consumers should have the right to return a used car within three days of purchase for a full refund, minus a reasonable charge for mileage.
- (c) Car dealers often impose a hidden charge when they arrange loans for car buyers. They impose this extra charge by arranging car loans at a higher interest rate than the rate the consumer actually deserves, based on his or her credit history. In exchange for raising the interest rate, the dealers receive a kickback from lenders. The higher the buyer's interest rate, the more profit the dealer makes on the financing. This hidden, excessive charge affects many car buyers, even those with good or excellent credit. Sometimes, the charge adds hundreds or thousands of dollars to the cost of financing a car. Car dealers should be required to disclose a buyer's credit score and the lowest interest rate for which the buyer qualifies, and dealers should be prohibited from charging more than \$150 for arranging a loan.
- (d) Many car dealers sell "certified" used cars that they claim have been thoroughly inspected and are a cut above other used cars. They charge a premium for these vehicles. Some of these so-called "certified" cars, however, are actually badly damaged total loss "salvage" cars, or lemons repurchased under the lemon law. Some are unsafe vehicles, known as "chop jobs," that have been patched together with parts from different scrapped vehicles and improperly welded together. Other "certified" used cars have been driven a high number of miles and have had their odometers rolled back. According to the Federal Bureau of Investigation (FBI), odometer fraud is one of the leading property

crimes in the nation. Some “certified” used cars are rental cars, taxicabs, or police cars that have been driven into the ground, wrecked, or poorly repaired, while others are “gray market” cars that fail to meet U.S. standards. Car dealers should be prohibited from advertising or selling these defective automobiles as “certified” used cars, and “certified” used cars should be inspected by qualified technicians prior to sale.

(e) Car dealers often attempt to sell after-market items such as service contracts, fabric protection, alarms and vehicle theft products to consumers without disclosing the true monthly cost of those items. Dealers commonly engage in “loan packing” to disguise the actual monthly cost of these products. Car dealers should be required to disclose the actual monthly cost of after-market items, so that consumers can make an informed decision about purchasing these products.

Section 3: Purpose and Intent.

In order to ensure that used car buyers have the same rights as the buyers of many other products, to ensure that they are not overcharged by dealers for arranging a loan or for the purchase of after-market items, and to ensure that the “certified” used cars they buy meet specified standards for quality, the people of the State of California do hereby enact the Car Buyers’ Bill of Rights Act. This measure is intended to accomplish its purposes by amending the Civil Code to:

- (a) Permit buyers of used cars to return a car to a car dealer within three days of purchase, for a full refund, minus a reasonable charge for mileage, and require car dealers to disclose this right in the sales contract;
- (b) Require car dealers who arrange loans for buyers of cars to disclose the buyer’s credit score and the lowest interest rate for which the buyer qualifies from the lender and prohibit car dealers from charging more than \$150 to arrange a loan for the buyer;
- (c) Require that “certified” used cars be inspected by technicians qualified to inspect for collision repair and mechanical condition and prohibit car dealers from advertising or selling “chop jobs,” “gray market” cars, daily rental cars, taxicabs, police cars, fleet vehicles, or cars that that have sustained material damage or that have had their odometers rolled back, as “certified” used cars; and
- (d) Require that car dealers disclose to car buyers the actual monthly cost to the buyer of after-market items.

Section 4: Section 2982.2 is added to the Civil Code to read as follows:

Section 2982.2. (a) For the purposes of this section, “seller” means a person engaged in the business of selling or leasing motor vehicles under any motor vehicle sale contract, including a conditional sale contract. “Seller” does not include a private individual who is not required to be licensed to sell vehicles in California.

(b) Notwithstanding Section 2982 or any other provision of law, the buyer of any used or pre-owned motor vehicle has the right to cancel a motor vehicle sale contract, including a motor vehicle conditional sale contract, until midnight of the third "business day" after the day on which the buyer signs an agreement or offer to purchase.

(1) Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address specified in the contract. To complete the cancellation, the buyer must return the motor vehicle, in substantially as good condition as when received, to the seller at the seller's place of business within 24 hours of providing written notice of termination. A used motor vehicle that is returned with damage sustained as a result of a defect existing at the time of sale shall be deemed to be "in substantially as good condition as when received" for the purposes of this section.

(2) Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid.

(3) Notice of cancellation given by the buyer need not take any particular form, as long as it is written, and however expressed, is effective if it indicates the intention of the buyer not to be bound by the motor vehicle conditional sale contract.

(4) Upon completion of cancellation of the contract, the buyer is entitled to a full refund from the seller, minus a reasonable offset for mileage added to the odometer after purchase. "A reasonable offset for mileage added to the odometer after purchase" means the sum of the purchase price of the motor vehicle, divided by 120,000 miles, multiplied by the number of miles added to the odometer after purchase.

(5) A motor vehicle sale contract, including a conditional sale contract, for the sale of a used or pre-owned car, shall contain in immediate proximity to the space reserved for the buyer's signature, a conspicuous statement, written in the same language, e.g., Spanish, as principally used in the oral sales presentation, in a size equal to at least 10-point bold type, as follows: "You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction by providing written notice of cancellation to the seller at _____ [seller's address]. Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid. The notice of cancellation need not take any particular form, as long as it is written and it indicates your intention to cancel this transaction. You must complete the cancellation by returning the car, in substantially as good condition as when received, to the seller at _____ [seller's place of business] within 24 hours of providing written notice that you intend to cancel this transaction."

(c) If the seller of a motor vehicle arranges a loan for the buyer, the seller shall disclose the buyer's credit score, as defined in Civil Code section 1785.15.1, and the lowest interest rate from the lender for which the buyer qualifies. The seller shall include this disclosure in the contract, written in the same language, e.g., Spanish, as used in the contract, in at least 10-point boldface type, reading as follows: "Notice to buyer:

(1) Your credit score, as calculated by _____, is _____; (2) The lowest interest rate

from the lender for which you qualify is ____%.” The seller may charge the buyer no more than \$150 for arranging the loan and is prohibited from accepting any other commission, payment or compensation for arranging the loan.

(d) If the seller of a motor vehicle arranges a loan for the buyer and the purchase and/or lease includes the sale of after-market items, such as an extended warranty, a service contract, fabric protection, an alarm and/or a vehicle theft product, the seller shall disclose in the contract, written in the same language, e.g., Spanish, as used in the contract, in at least 10 point boldface type, reading as follows: “Notice to the buyer: (1) You have agreed to purchase the following after-market item: _____; (2) The cash price of this item is: \$_____; (3) The actual monthly cost to the buyer for this item is: \$_____/month; (4) The total cost for this item is: \$_____.”

Section 5: Section 1793.27 is hereby added to the Civil Code to read as follows:

Section 1793.27(a) “Certified” used or pre-owned motor vehicle means a used or pre-owned motor vehicle, built to United States standards, that has been inspected by a technician qualified to inspect for collision repair and mechanical condition prior to sale and that has not sustained material damage, as defined in Vehicle Code section 9990, had its odometer rolled back, been repurchased by a dealer or manufacturer pursuant to a state or federal warranty statute, or had its title branded “lemon law buyback,” “manufacturer repurchase,” “salvage,” “junk,” “nonrepairable,” “flood,” or similar designation, or been used as a daily rental car, taxicab, police vehicle, or fleet sales vehicle.

(b) No dealer, as defined in Civil Code section 1793.23(h), shall advertise or sell a pre-owned or used motor vehicle as a “certified” pre-owned or “certified” used motor vehicle unless the motor vehicle satisfies the definition in paragraph (a).

(c) In addition to any other remedies available under the law, the remedies set forth in Civil Code section 1794 shall apply to any violation of this section.

Section 6: Amendment.

This Act may be amended to further its purposes by a bill passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, and signed by the Governor.

Section 7: Severability.

The provisions of this Act are severable. If any provision of this Act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

Section 8: Conflicting Initiatives.

In the event that this measure and another initiative measure or measures relating to the sale of motor vehicles shall appear on the same statewide election ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measure shall be null and void.